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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**  
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10 TRUSTEES OF THE BRICKLAYERS &  
11 ALLIED CRAFTWORKERS LOCAL 13  
12 DEFINED PENSION TRUST FOR  
13 SOUTHERN NEVADA, *et al.*,

14 Plaintiffs,

15 v.

16 GRANITE WORKS, INC., *et al.*,

17 Defendants.

Case No. 2:10-CV-00990-KJD-LRL

**ORDER**

18 Presently before the Court is Defendant Granite Work, Inc.'s Motion to Set Aside Default  
19 (#17). Plaintiffs filed a response in opposition (#24) to which Defendant replied (#26).

20 **I. Background and Procedural History**

21 Plaintiffs filed the present action on June 23, 2010. Defendant Granite Works, Inc.  
22 ("Defendant" or "Granite") was personally served with the summons and complaint on or about July  
23 2, 2010. Defendant Granite's answer was due July 23, 2010. Though aware that Defendant was  
24 represented by counsel, Plaintiffs' counsel did not inform Granite Works, Inc.'s counsel that they  
25 were moving for entry of default or inquire about Granite's intention to proceed.  
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1 On July 28, 2010, the Clerk of the Court entered default against Granite Works, Inc. On July  
2 30, 2010, Granite filed the present motion to set aside entry of default.

## 3 II. Analysis

4 Pursuant to Federal Rules of Civil Procedure 55(c), a court may set aside entry of default “for  
5 good cause shown.” The “good cause” standard is the same standard that governs vacating a default  
6 judgment under Rule 60(b). See Franchise Holding II, LLC v. Huntington Restaurants Group, Inc.,  
7 375 F.3d 922, 925 (9th Cir. 2004). The law favors deciding a case on its merits. See id. Thus, a  
8 default judgment is appropriate only in extreme circumstances. TCI Group Life Ins. Plan v.  
9 Knoebber, 244 F.3d 691, 696 (9th Cir. 2001).

10 The Court considers three factors in analyzing good cause: (1) whether the defaulting party  
11 engaged in culpable conduct leading to the default; (2) whether the defaulting party has a meritorious  
12 defense; and (3) whether vacating the entry of default would prejudice the plaintiff. See Franchise  
13 Holding, 375 F.3d at 926. The court has discretion to deny the motion to set aside default if any one  
14 of the three factors favor plaintiff. See id. For the reasons stated *infra*, the Court finds that  
15 Defendant has shown good cause to vacate the entry of default.

### 16 A. Culpable Conduct

17 When examining culpable conduct, the court concurrently examines any excusable neglect of  
18 the defaulting party. See id. at 927. Defendant’s conduct is culpable if it “received actual or  
19 constructive notice of the filing of the action and failed to answer” or otherwise defend. Direct Mail  
20 Specialists, Inc. v. Eclat Computerized Techs., Inc., 840 F.2d 685, 690 (9th Cir. 1988). A  
21 defendant’s failure to answer, however, may be excused depending on the reason for the delay if  
22 defendant acted in good faith. See TCI Group, 244 F.3d at 696. Further, conduct is culpable only  
23 where the explanation of the default is consistent with a devious, deliberate, willful or bad faith  
24 failure to respond. See Employee Painter’s Trust v. Ethan Enters., 480 F.3d 993, 1000 (9th Cir.  
25 2007).

1 Here, Plaintiffs have not argued that Granite's counsel was notified that they would be  
2 seeking entry of default as required by Nevada Rule of Professional Conduct 3.5A. See Cen Val  
3 Leasing Corp. v. Bockman, 668 P.2d 1074 (Nev. 1983)(failure to inquire of opposing counsel about  
4 intention to proceed before seeking default is grounds for setting aside default). Defendant Granite  
5 has met its burden in establishing that it acted in good faith. Once Defendant's counsel became  
6 aware that default had been entered, he filed the present motion within one day. Therefore, the  
7 Court finds that Defendant's counsel was acting in good faith, and his conduct was not culpable.  
8 Accordingly, this factor weighs in favor of setting aside the entry of default.

9 B. Meritorious Defense

10 To succeed on a motion to set aside a default, the defendant must set forth specific facts that  
11 constitute a defense. See Franchise Holding, 375 F.3d at 926. Further, mere general denial, without  
12 facts to support it, is not sufficient. See id. Here, Defendant has set forth specific facts that may  
13 constitute a meritorious defense. Accordingly, this factor weighs in favor of setting aside default.

14 C. Prejudice

15 Plaintiffs argues that they will be prejudiced if default is set aside. However, the rules favor  
16 the resolution of cases on their merits. See TCI Group, 244 F.3d at 695-696. Here, Plaintiffs have  
17 made no showing that setting aside the entry of default will prejudice them. Having to litigate the  
18 case on the merits rather than benefitting from entry of a default judgment is not prejudice adequate  
19 to deny Defendant's motion. Accordingly, this factor weighs in favor of setting aside the default.

20 III. Conclusion

21 Defendant Granite Work, Inc.'s Motion to Set Aside Default (#17) is **GRANTED**;

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1 IT IS FURTHER ORDERED that the Clerk of the Court **VACATE** Entry of Default as to  
2 Defendant Granite Works, Inc. (#15).

3 DATED this 17<sup>th</sup> day of December 2010.  
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7 Kent J. Dawson  
8 United States District Judge  
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